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LOK SABHA

The following Bills were introduced in Lok Sabha on the 20th
November, 1964:—

BILL No. 68 OF 1964

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifteenth Year of the Re-
public of India as follows:—

1. (1) This Act may be called the Constitution (Amendment)
Act, 1964.

Short
title
and

5 (2) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

commence-
ment.

2. In the Seventh Schedule to the Constitution,—

(i) in List II—State List, entry 8 shall be omitted;

Amend-
ment of
the
Seventh
Schedule.

10 (ii) in List III—Concurrent List, after entry 19, the follow-
ing entry shall be inserted, namely:—

“19A. Intoxicating liquors, that is to say, the production,
manufacture, possession, transport, purchase and sale of
intoxicating liquors.”

STATEMENT OF OBJECTS AND REASONS

The policy regarding intoxicating liquors, their production, transport, sale and consumption etc. is different in different States. It has resulted in great many complications and even reversal of the policy of prohibition in many States which had gone dry after Independence. In order to evolve a uniform policy for the country, it is necessary to transfer this item from the State List to Concurrent List in the Seventh Schedule to the Constitution.

Hence the Bill.

NEW DELHI;

BALKRISHNA WASNIK

The 19th August, 1964.

(c) "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement;

and includes an agreement under which—

5

(i) possession of goods is delivered to another person, or condition that he pays an agreed amount in periodical instalments, and

(ii) the property in the goods is to pass to such person on the payment of the last of such instalments, and

10

(iii) such person has a right to terminate the agreement at any time before the property so passes;

(d) "hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of the goods to which the agreement relates; and includes any sum payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such an agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means;

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but does not include any sum payable as a penalty or as compensation or damages for a breach of the agreement;

(e) "hirer" means the person who obtains or has obtained possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

25

(f) "owner" means the person who lets or has let goods to a hirer under a hire-purchase agreement, and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law; and

30

(g) all words and expressions used and not defined in this Act but defined in the Indian Sale of Goods Act, 1930, shall have the meanings respectively assigned to them in that Act.

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CHAPTER II

Form and contents of Hire-purchase agreements

3. (1) Every hire-purchase agreement shall be—

(a) in writing, and

5 (b) signed by all the parties thereto.

Hire-purchase agreements to be in writing and signed by all parties.

(2) A hire-purchase agreement shall be void if in respect thereof, any of the requirements specified in sub-section (1) has not been complied with.

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, the hire-purchase agreement shall be voidable at the option of the owner.

4. (1) Every hire-purchase agreement shall state—

15 (a) the hire-purchase price of the goods to which the agreement relates;

Contents of hire-purchase agreements.

(b) the cash price of the goods, that is to say, the market value of the goods on the date of the agreement;

(c) the date on which the agreement shall be deemed to have commenced;

20 (d) the number of the instalments by which the hire-purchase price is to be paid, the amount of each of those instalments, and the date, or the mode of determining the date, upon which it is payable, and the person to whom and the place where it is payable; and

25 (e) the goods to which the agreement relates, in a manner sufficient to indentify them.

(2) Where any part of the consideration for a hire-purchase agreement is or is to be provided otherwise than in cash, the hire-purchase agreement shall contain a description of that part of the consideration.

30 (3) Where any of the requirements specified in sub-section (1) or sub-section (2) has not been complied with, the hirer may institute a suit for getting the hire-purchase agreement rescinded; and the court may, if it is satisfied that the failure to comply with any such requirement has prejudiced the hirer, rescind the agreement on such terms as it thinks just, or pass such other order as it thinks fit in the circumstances of the case.

Two or more agreements when treated as a single hire-purchase agreement.

5. Where by virtue of two or more agreements in writing, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and the bailee has an option to purchase the goods, and the documents taken together comply with the requirements specified in sections 3 and 4, the agreements shall be treated for the purposes of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made. 5

CHAPTER III

Warranties and conditions, and passing of property

Warranties and conditions to be implied in hire-purchase agreements.

6. (1) Notwithstanding any agreement to the contrary, in every hire-purchase agreement there shall be an implied warranty—

(a) that the hirer shall have and enjoy quiet possession of the goods, and

(b) that the goods shall be free from any charge or encumbrance in favour of any third party at any time when the property is to pass. 15

(2) Notwithstanding any agreement to the contrary, in every hire-purchase agreement there shall be—

(a) an implied condition on the part of the owner that he shall have a right to sell the goods at any time when the property is to pass; 20

(b) an implied condition that the goods shall be of merchantable quality, but no such condition shall be implied by virtue of this clause—

(i) as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or

(ii) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed, or 30

(iii) if the goods are second-hand goods and the agreement contains a statement to that effect.

(3) Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition in every hire-purchase agreement that the goods shall be reasonably fit for such purpose. 35

(4) An owner shall not be entitled to rely on any provision in a hire-purchase agreement excluding or modifying the condition set out in sub-section (3) unless he proves that before the agreement*

was made the provision was brought to the notice of the hirer and its effect made clear to him.

(5) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

7. Subject to the provisions of this Act, the property in the goods passing of which the hire-purchase agreement relates shall pass to the hirer property only on the completion of the purchase in the manner provided in the agreement.

CHAPTER IV

10

Rights and obligations of the hirer

8. (1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving to the owner not less than fourteen days' notice in writing of his intention so to do, purchase the goods to which the agreement relates on payment of the hire-purchase price as reduced by the amounts already paid by him to the owner towards the hire-purchase price and as further reduced by a rebate calculated in the manner provided in sub-section (2). Right of hirer to purchase at any time with rebate.

20 (2) The rebate for the purposes of sub-section (1) shall be equal to two-thirds of an amount which bears to the hire-purchase charges the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price.

25 *Explanation.*—In this sub-section, "hire-purchase charges" means the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement.

30 (3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the hire-purchase agreement, but where the terms of the agreement entitle the hirer to a rebate higher than that allowed by this section the hirer shall be entitled to the rebate provided by the agreement.

(4) The Central Government may, by notification in the Official Gazette, declare that this section shall not apply or shall apply with such modifications as may be specified in the notification, to any goods or classes of goods, where it is satisfied that having regard to the fact that such goods or classes of goods are in short supply or are subject to restrictions in respect of import or similar considerations, such declaration is necessary in the public interest.

Right of
hirer to
terminate
agreement
at any
time.

9. (1) The hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving not less than fourteen days' notice in writing of his intention so to do and re-delivering the goods to the owner or tendering them to the owner, terminate the hire-purchase agreement by payment or tender to 5 the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under sub-section (2).

(2) Where the hirer terminates the agreement under sub-section (1), and the agreement provides for the payment of a sum 10 named on account of such termination, the liability of the hirer to pay that sum shall be subject to the following conditions:—

(a) where the total of the sums paid and the sums due in respect of the hire-purchase price immediately before the termination exceeds one-half of the hire-purchase price, the hirer 15 shall not be liable to pay the sum so named;

(b) where the total of the sums paid and the sums due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price, the hirer shall be liable to pay the difference between the said 20 total and the said one-half, or such less sum as may be named in the agreement;

(c) nothing in this sub-section shall prejudice any liability of the hirer for any hire which might have accrued due before the termination. 25

(3) Any provision in any agreement, whereby the right conferred on a hirer by this section to terminate the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this 30 section, shall be void.

(4) Nothing in this section shall prejudice any right of a hirer to terminate a hire-purchase agreement otherwise than by virtue of this section.

Right of
hirer to
appropriate
payments
in respect
of two or
more
agreements.

10. A hirer who is liable to make payments in respect of two or 35 more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction 40 of the sum due under any one of the agreements, or in or towards

the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the sum so paid shall, by virtue of this section, stand appropriated towards the satisfaction of
5 the sums under the respective hire-purchase agreements in the order in which the agreements were entered into.

11. (1) The right, title and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner or, if his consent is unreasonably withheld, without his consent.

Right of
hirer to
assign
his right,
title and
interest
under the
agreement.

10 (2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent for such an assignment as is mentioned in sub-section (1), and where an owner requires any such payment or any other consideration for his consent, that consent shall be deemed to be unreasonably with-
15 held.

(3) Where on a request for his consent thereto being made by a hirer the owner fails or refuses to give his consent to such an assignment as is mentioned in sub-section (1), the hirer may apply by petition to the court for an order declaring that the consent of the
20 owner to the assignment has been unreasonably withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

Explanation.—In this section “court” means a court which would have jurisdiction to entertain a suit for the relief claimed in the
25 petition.

(4) As a condition of granting such consent, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved
30 by the owner, whereby, without prejudicing or affecting the continuing personal liability of the hirer in such respects the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during
35 the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities.

(5) The provisions of this section shall apply notwithstanding anything to the contrary contained in the hire-purchase agreement.

Obligations of the hirer to comply with the agreement.

12. Subject to the provisions of this Act, the hirer shall be bound—

- (a) to pay the hire in accordance with the agreement, and
- (b) otherwise to comply with the terms of the agreement,

Obligations of the hirer in respect of care to be taken of goods.

13. (1) The hirer is, in the absence of a contract to the contrary,—

- (a) bound to take as much care of the goods to which the hire-purchase agreement relates to as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value; and
- (b) not responsible for the loss, destruction or deterioration of the goods, if he has taken the amount of care thereof described in clause (a).

(2) The hirer is liable to make compensation to the owner for any damage caused by failure to take care of the goods in accordance with the provisions of sub-section (1).

Obligation of hirer in respect of use of goods.

14. If the hirer makes any use of the goods to which the hire-purchase agreement relates which is not according to the conditions of the agreement, the hirer shall be liable to make compensation to the owner for any damage arising to the goods from or during such use of them.

Obligation of hirer to give information as to whereabouts of goods.

15. (1) Where by virtue of a hire-purchase agreement a hirer is under a duty to keep the goods comprised in the agreement in his possession or control, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

(2) If a hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees.

CHAPTER V

Rights and obligations of the owner

Right of owner to terminate hire-purchase agreement for default.

16. Where the hirer—

- (a) makes default in the payment of hire as provided in the hire-purchase agreement; or
- (b) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or

(c) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement; the owner shall, subject to the provisions of section 19 and 20, be entitled to terminate the agreement by giving to the hirer notice of termination in writing.

in pay-
ment of
hire or
unautho-
rised act
or breach
of express
conditions.

17. Where a hire-purchase agreement is terminated under this Act, then the owner shall be entitled,—

Rights of
owner on
termina-
tion.

(a) to retain the hire which has accrued due and which has already been paid;

(b) to recover the arrears of hire due;

(c) subject to the provisions of sub-section (2) of section 9, to forfeit the initial deposit, if so provided in the agreement;

(d) subject to the provisions of section 18, and subject to any contract to the contrary, to seize the goods;

(e) subject to the provisions of sections 19 and 20, to recover possession of the goods by suit or by petition under section 18; and

(f) to damages for non-delivery of the goods, from the date on which the termination is effective, to the date on which the goods are delivered to or seized by the owner.

18. (1) Where goods have been let under a hire-purchase agreement and the statutory proportion of the hire-purchase price has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by petition under sub-section (3) or by suit.

Restric-
tion on
owner's
right to
recover
possession
of goods
otherwise
than
through
Court.

Explanation.—In this section, “statutory proportion” means—

(a) one-half, where the hire-purchase price is fifteen thousand rupees or less, and

(b) three-fourth, in other cases.

(2) If the owner recovers possession of goods in contravention of the provisions of sub-section (1), the hire-purchase agreement, if not previously terminated, shall terminate, and—

(a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner all sums paid by the hirer under the agreement or under any security given by him in respect thereof; and

(b) any surety shall be entitled to recover from the owner all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) Where, by virtue of the provisions of sub-section (1), the owner is precluded from enforcing a right to recover possession of the goods, he may present a petition for recovery of possession of the goods to any court having jurisdiction to entertain a suit for the same relief.

(4) The provisions of this section shall not apply in any case in which the hirer has terminated the agreement by virtue of any right vested in him.

Relief
against
termina-
tion for
non-pay-
ment of
hire.

19. Where the owner, after he has terminated the hire-purchase agreement in accordance with the provisions of clause (a) of section 16, institutes any suit or presents any petition against the hirer for the recovery of the goods, and at the hearing of the suit or petition, the hirer pays or tenders to the owner the hire in arrears, together with such interest thereon as may be payable under the terms of the agreement and his full costs of the suit or petition and complies with such other conditions, if any, as the court may think fit to impose, the court may, in lieu of making a decree or order for specific delivery, pass an order relieving the hirer against the termination; and thereupon the hirer shall continue in possession of the goods as if the agreement had not been terminated.

Relief
against
termina-
tion for
unautho-
rised act
or breach
of express
condition.

20. (1) Where a hire-purchase agreement has been terminated in accordance with the provisions of clause (b) or clause (c) of section 16, no suit or petition by the owner against the hirer for the recovery of the goods shall lie unless and until the owner has served on the hirer a notice in writing—

(a) specifying the particular breach or act complained of; and

(b) if the breach or act is capable of remedy, requiring the hirer to remedy it; and the hirer fails, within a period of fourteen days from the date of the service of the notice, to remedy the breach or act if it is capable of remedy.

(2) nothing in this section shall apply to an express condition relating to termination in case of non-payment of hire.

Obliga-
tion of
owner to
supply
copies and
informa-
tion.

21. (1) It shall be the duty of the owner to supply, free of cost, a true copy of the hire-purchase agreement, signed by the owner,—

(a) to the hirer, as soon as may be after execution of the agreement; and

(b) where there is a contract of guarantee, to the surety, on demand made at any time before the final payment has been made under the agreement.

(2) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer, within fourteen days after the owner receives a request in writing from the hirer in this behalf and the hirer tenders to the owner the sum of one rupee for expenses, a statement signed by the owner or his agent showing—

10 (a) the amount paid by or on behalf of the hirer;

(b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and

15 (c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(3) Where there is a failure without reasonable cause to carry out the duties imposed by sub-section (1), or sub-section (2) then, 20 while the default continues,—

(a) the owner shall not be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, or to enforce any right to recover the goods from the hirer, and

25 (b) no security given by the hirer in respect of money payable under the agreement or given by a surety in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or the surety by any holder thereof;

30 and, if the default continues for a period of one month, the defaulter shall be punishable with fine which may extend to two hundred rupees.

CHAPTER VI

Miscellaneous

35 22. Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of sections 8, 9, 18 and 21, be deemed to be a payment of that part of the hire-purchase price.

Discharge of price otherwise than by payment of money.

Insolvency
of hirer.

23. (1) Where, during the continuance of the hire-purchase agreement, the hirer is adjudged insolvent under any law relating to insolvency for the time being in force, the Official Receiver shall have, in respect of the goods which are in the possession of the hirer under the agreement, the same rights and obligations as the hirer 5 had in relation thereto.

(2) The Official Receiver may, with the permission of the Insolvency Court, and notwithstanding anything to the contrary contained in the hire-purchase agreement, assign the rights of the hirer under the agreement, to any other person, and the assignee shall have all 10 the rights and be subject to all the obligations of the hirer under the agreement.

Explanation.—In this section, “Official Receiver” means an Official Receiver appointed under the Provincial Insolvency Act, 1920, and 5 of 1920. includes any person holding a similar office under any other law 15 relating to insolvency for the time being in force.

Succe-
sive hire-
purchase
agreements
between
the same
parties.

24. Where goods have been let under a hire-purchase agreement, and at any time thereafter the owner makes a further hire-purchase agreement with the hirer relating to other goods, any such further hire-purchase agreement shall not have effect in so far as it affects 20 prejudicially any right which the hirer would have had by virtue of section 18 under the first-mentioned agreement, if such further hire-purchase agreement had not been made.

Evidence
of adverse
detention
in suit or
petition
to recover
possession
of the
goods.

25. (1) Where, in a suit or petition by an owner of goods which have been let under a hire-purchase agreement to enforce a right to 25 recover possession of the goods from the hirer, the owner proves that, before the commencement of the suit or petition and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover 30 possession thereof, be deemed to be adverse to the owner.

(2) Nothing in this section shall affect a claim for damages for conversion.

Hirer's
refusal to
surrender
goods not
to be con-
version in
certain
cases.

26. If, whilst by virtue of this Act the enforcement by an owner of a right to recover possession of goods from a hirer is subject to 35 any restriction, the hirer refuses to give up possession of the goods to the owner, the hirer shall not, by reason only of the refusal, be liable to the owner for conversion of the goods.

27. Any notice required or authorised to be served on or given to an owner or a hirer under this Act may be so served or given—

Service of notice.

(a) by delivering it to him personally; or

(b) by posting it addressed to him at his last known place of residence or business.

28. This Act shall not apply in relation to any hire-purchase agreement made before the commencement of this Act,

Act not to apply to existing agreements.

STATEMENT OF OBJECTS AND REASONS

In its 20th Report, the Law Commission had recommended that a separate law should be enacted for regulating hire-purchase transactions. Even though this Report was presented in May, 1961, no law on the lines suggested by the Commission has so far been brought forward by Government. As more and more people are resorting to hire-purchase system, it is high time that a law safeguarding the interests of both the parties be put on the Statute-book. The present Bill aims to achieve this object.

NEW DELHI;
October 16, 1964.

YASHPAL SINGH.

S. L. SHAKDHER,
Secretary.